No. 82-1433

In the Supreme Court of the United States

OCTOBER TERM, 1982

KENNY RICHARDSON, PETITIONER

v.

RAYMOND J. DONOVAN, SECRETARY OF LABOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether Section 109(c) of the Federal Coal Mine Safety and Health Act of 1969, 30 U.S.C. 819(c) (superseded in 1978), and its successor, Section 110(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. (Supp. V) 820(c), violate equal protection by imposing civil penalties upon agents of corporate mine operators who knowingly authorize health and safety violations but not upon agents of non-corporate mine operators who engage in similar conduct.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-7a) is reported at 689 F.2d 632. The opinion of the Federal Mine Safety and Health Review Commission (Pet. App. 8a-40a) is reported at 3 F.M.S.H.R.C. 8, and the opinion of the Administrative Law Judge (Pet. App. 41a-70a) is reported at 1 F.M.S.H.R.C. 874.

JURISDICTION

The judgment of the court of appeals was entered on October 1, 1982 (Pet. App. 71a). A petition for rehearing was denied on December 9, 1982 (Pet. App. 72a). The petition for a writ of certiorari was filed on February 28, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner is a master mechanic employed by Peabody Coal Company at its Sinclair Mine near Drakesboro, Kentucky (Pet. App. 1a, 43a). His primary duty is to supervise repair of the mine's strip-mining equipment, including a dragline (*ibid.*).[1] Following investigation of a fatal accident at the mine, a federal inspector issued citations to Peabody Coal Company for violations of safety regulations.[2] One of the citations alleged that Peabody had violated a safety standard, 30 C.F.R. 77.404(a), by not immediately removing from service a dragline with a cracked boom (Pet. App. 9a, 42a).[3] The Secretary of Labor thereafter sought administrative assessment of civil penalties against petitioner, alleging that petitioner was an "agent" of a corporate operator (Peabody) and had "knowingly authoriz[ed], order[ed], or carr[ied] out" the safety violation (Pet. App. 2a, 9a, 42a; C.A. App. 5-7). See 30 U.S.C. (Supp. V) 815 and 820(c).[4]

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[1]A dragline is a piece of excavating equipment that uses a bucket suspended and operated by cables. The cables are suspended from two beams, one of which is the "boom" (Pet. App. 9a, 43a-44a).

[2]Peabody paid the penalties without contesting the citations (Pet. App. 2a n.1, 9a-11a).

[3]An examination of the boom after the accident disclosed that, before the collapse, the lower cord of the boom had been cracked in all but nine inches of its 38-inch circumference (Pet. App. 49a). If a dragline is operated with a crack in the boom, the crack will continue to enlarge (*id.* at 50a-51a). After inspecting the boom, Richardson personally authorized continued use of the dragline until repairs could begin (*id.* at 45a-46a, 57a, 62a). After repairs had begun, the boom fell to the ground, killing one miner and injuring two others (*id.* at 49a). Petitioner's responsibilities included deciding whether a piece of equipment should be taken out of service for safety reasons (1 Tr. 308-309).

[4]Petitioner's violation occurred while the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 801 *et seq.* ("the Coal Act"), was in effect. However, the Secretary of Labor filed the petition for assessment of civil penalties under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. (Supp. V) 801 *et seq.* ("the Mine Act"), which superseded or amended many of the provisions of the Coal Act. Section 109(c) of the

2. The administrative law judge held that petitioner had knowingly authorized a violation of the safety standard by failing to remove the unsafe dragline from service and assessed a penalty of $500 (Pet. App. 55a-63a, 70a). The ALJ did not address the constitutionality of the statutory provision imposing the civil penalty, Section 109(c) of the Federal Coal Mine Safety and Health Act of 1969 ("the Coal Act") (Pet. App. 51a-52a n.3).

Petitioner sought discretionary review before the Federal Mine Safety and Health Review Commission. The Commission granted review and affirmed the civil penalty (Pet. App. 13a-18a). In addition, the Commission upheld the constitutionality of Section 109(c) (Pet. App. 23a-39a). The Commission found that "imposing personal liability on corporate agents furthers the overall goal of the Act by providing an additional deterrent to many of those individuals in a position to achieve compliance" (*id.* at 35a). Furthermore, the Commission noted that a high proportion of the nation's coal mines are run by corporate operators and that a decision-maker in a non-corporate mine is often "chargeable as a mine operator himself under the Act" (*id.* at 36a-37a). Thus, the Commission concluded that "Congress' imposition of liability on corporate agents is not totally arbitrary but has a rational basis" and is therefore constitutional (*id.* at 38a).

The court of appeals affirmed the Commission's decision sustaining the civil penalty and upholding the constitutionality of Section 109(c). Since "[t]he legislature may act to

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Coal Act, 30 U.S.C. 819(c) (superseded in 1978), and its successor, Section 110(c) of the Mine Act, 30 U.S.C. (Supp. V) 820(c), both deal with the assessment of civil penalties against corporate agents and are identical except for the redesignation of affected sections. As a result, the court of appeals chose to discuss petitioner's violation in terms of 30 U.S.C. 819(c). (See Pet. App. 8a n.1.) We have followed the same course here.

remedy part of a problem only," the court stated (Pet. App. 4a), the failure to subject agents of non-corporate operators to liability under Section 109(c) does not render that provision unconstitutional. The court recognized (Pet. App. 3a) that a "non-corporate mining operation is going to be relatively small, and the probability is that the decision-maker is going to fit the statutory definition of 'operator' " and therefore be personally liable under Section 109(a)(1), 30 U.S.C. 819(a)(1). The court observed (Pet. App. 3a-4a) that the purpose of Section 109(c) is to "correct th[e] imbalance by giving the corporate employee a direct incentive to comply with the Act." The court thus concluded (Pet. App. 4a) that "[t]he congressional intent behind [Section 109(c)], to hold an additional group of decision-makers personally liable, is rationally related to the purpose of the Act—the enhanced safety of the mine worker" (Pet. App. 4a).[5]

ARGUMENT

The court of appeals correctly applied this Court's decisions regarding the constitutionality of classifications in economic legislation. The court's decision that Section 109(c) does not violate equal protection does not conflict with any decision of this Court or any other court of appeals and consequently does not warrant further review.

Where, as here, a statutory classification neither infringes on a fundamental right nor involves a suspect classification, it passes constitutional muster so long as it "classif[ies] the persons it affects in a manner rationally related to legitimate governmental objectives." *Schweiker* v. *Wilson*, 450 U.S.

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[5]District Judge Enslen dissented on the ground that establishing personal liability for corporate agents, while "exculpating" non-corporate agents, "does not rationally further Congress' stated purpose to protect *all* miners and to assure that all mine operators and miners comply with health and safety standards" (Pet. App. 6a-7a; emphasis in original).

221, 230 (1981) (citations omitted). *United States Railroad Retirement Bd.* v. *Fritz*, 449 U.S. 166, 174-176 (1980); *City of New Orleans* v. *Dukes*, 427 U.S. 297, 303 (1976) (per curiam); *Dandridge* v. *Williams*, 397 U.S. 471, 485 (1970). Particularly when economic legislation, such as the Coal Act, is challenged, "this Court consistently defers to legislative determinations as to the desirability of particular statutory discriminations." *City of New Orleans* v. *Dukes, supra*, 427 U.S. at 303 (citation omitted). See also *United States Railroad Retirement Bd.* v. *Fritz, supra*, 449 U.S. at 175; *Duke Power Co.* v. *Carolina Envtl. Study Group, Inc.*, 438 U.S. 59, 83 (1978); *Idaho Dep't of Employment* v. *Smith*, 434 U.S. 100, 101 (1977). This Court has recognized, in discussing another provision of the Coal Act, "that legislative Acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality, and that the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way." *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 15 (1976) (citations omitted).

Petitioner contends (Pet. 7-9) that despite the "substantial constitutional latitude" afforded Congress in its treatment of different groups, Section 109(c) is "fundamentally arbitrary and inconsistent with the statute's expressed purpose."[6] Petitioner does not dispute, however, that holding

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[6]Petitioner incorrectly asserts (Pet. 7) that this Court's decision in *Liggett Co.* v. *Lee*, 288 U.S. 517 (1933), struck down a classification based on corporate status and is thus inconsistent with the court of appeals' decision. The decision in *Liggett Co. upheld* a state tax that drew a distinction between owners of chain stores and owners of single stores or distinct stores in voluntary cooperation (*id.* at 532). What the Court held unconstitutional was a tax that placed a heavier burden on stores with branches in different counties (*id.* at 533). This classification was based not on corporate status, but on the location of the business (*id.* at 535). *Liggett Co.*, therefore, is not inconsistent with the lower court's ruling in the case at bar. See *Friedman* v. *Rogers*, 440 U.S. 1 (1979) (state may prohibit the practice of optometry under a trade name); *Semler* v. *Dental Examiners*, 294 U.S. 608, 611 (1935) (state may deny corporations right to practice dentistry).

corporate agents liable for violations of the Act's safety standard is rational. Subjecting those persons most directly responsible for safety violations to individual liability is intended to deter knowing misconduct and increase safety-consciousness, thereby furthering the Coal Act's primary purpose, "to protect the health and safety of the Nation's coal miners." 30 U.S.C. 801(g)(1); *Donovan* v. *Dewey*, 452 U.S. 594, 602 (1981). See S. Rep. No. 91-411, 91st Cong., 1st Sess. 39 (1969).

This otherwise reasonable statutory provision is not made irrational by its failure to subject agents of non-corporate entities to liability as well. Congress deliberately chose to subject agents of corporate operators to personal liability. As the House Committee Report states (H.R. Rep. No. 91-563, 91st Cong., 1st Sess. 11-12 (1969)):

> The committee expended considerable time in discussing the role of an agent of a corporate operator and the extent to which he should be penalized and punished for his violations of the [A]ct. At one point, it was agreed to hold the corporate operator responsible for any fine levied against an agent. It was ultimately decided to let the agent stand on his own and be personally responsible for any penalties or punishment meted out to him. * * * The committee chose to qualify the agent as one who could be penalized and punished for violations, because it did not want to break the chain of responsibility for such violations after penetrating the corporate shield.

Because the inclusion of the classification was purposeful, it is logical to infer that Congress intended it to further the purposes of the Coal Act. See *Schweiker* v. *Wilson*, *supra*, 450 U.S. at 236.

As the court of appeals recognized (Pet. App. 3a), Congress may well have concluded that "any non-corporate mining operation is going to be relatively small, and the probability is that the decision-maker is going to fit the statutory definition of 'operator' " and thus be liable under 30 U.S.C. 819(d).[7] In a larger corporate mine, on the other hand, it is much less likely that an individual decision-maker would be exposed to liability as an "operator." Thus, Congress held this additional group of decision-makers personally liable to enhance the safety of mine workers (Pet. App. 4a).[8]

In the instant case, for example, petitioner is certainly not an "operator" of the Sinclair mine, which is one of the largest mines in the country. *1982 Keystone Coal Industry Manual* 731 (McGraw-Hill). If the mine were a sole proprietorship or partnership, it is much more probable that a person with Richardson's duties would bear personal responsibility under Section 109(a) as an "operator" of the mine. The court below correctly concluded (Pet. App. 3a-

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[7]An "operator" is defined in 30 U.S.C. 802(d) as "any owner, lessee, or other person who operates, controls, or supervises a coal mine." "It does not, however, include persons whose primary responsibility is to run the mine or supervise employees such as a superintendent or foreman unless such person meets the statutory definition of operator. These are agents of the operator." S. Rep. No. 91-411, 91st Cong., 1st Sess. 45 (1969).

[8]To be sure, as petitioner suggests (Pet. 14), there may be instances in which a particular decision-maker would not be personally liable under the Coal Act, as in a large non-corporate entity. As we have noted, however, the fact that the Act's classifications are imperfect does not render the provision at issue here unconstitutional. See, *e.g.*, *Vance* v. *Bradley*, 440 U.S. 93, 109 (1979). "It is enough that the Act approaches the problem * * * rationally; whether a broader [liability] scheme would have been wiser or more practical under the circumstances is not a question of constitutional dimension." *Usery* v. *Turner Elkhorn Mining Co.*, *supra*, 428 U.S. at 19 (citations omitted). See also *Duke Power Co.* v. *Carolina Envtl. Study Group, Inc.*, *supra*, 438 U.S. at 94.

4a) that Section 109(c) "attempts to correct this imbalance by giving the corporate employee a direct incentive to comply with the Act." "It is by such practical considerations based on experience rather than by theoretical inconsistencies that the question of equal protection is to be answered" (*Railway Express Agency, Inc.* v. *New York*, 336 U.S. 106, 110 (1949) (citations omitted)). Furthermore, Congress could reasonably have concluded that the need for individual accountability was particularly "acute" (*Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 487 (1955)) with respect to corporations because most large mines are corporate entities.[9] Consequently, the choices that corporate operators and their agents make about safety and health matters affect more miners than do the choices of their non-corporate counterparts.

The foregoing factors provide ample justification for the congressional classification at issue.[10] As the court of appeals acknowledged (Pet. App. 4a), a " 'statute is not invalid under the Constitution because it might have gone farther than it did' " (*Katzenbach* v. *Morgan*, 384 U.S. 641, 657 (1966), quoting *Roschen* v. *Ward*, 279 U.S. 337, 339 (1929)). Where fundamental rights and suspect classifications are not at issue, "[i]f the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical

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[9]Most of the largest coal mines in the nation are owned and operated by corporate entities. See, *e.g.*, *1982 Keystone Coal Industry Manual* 731, 753-756 (McGraw-Hill); *Standard & Poor's Register of Corporations* (1982).

[10]Contrary to petitioner's assertion (Pet. 9-10 n.9), it is "constitutionally irrelevant" whether Congress explained the distinction in treatment between corporate and non-corporate agents, "because this Court has never insisted that a legislative body articulate its reasons for enacting a statute." *United States Railroad Retirement Bd.* v. *Fritz*, *supra*, 449 U.S. at 179.

nicety or because in practice it results in some inequality' " (*Dandridge* v. *Williams, supra*, 397 U.S. at 485, quoting *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U.S. 61, 78 (1911)). Thus, although such statutory distinctions may be "imperfect" (*Vance* v. *Bradley*, 440 U.S. 93, 109 (1979)), may "only partially ameliorate a perceived evil" (*City of New Orleans* v. *Dukes, supra*, 427 U.S. at 303), or may even appear "illogical" (*Metropolis Theatre Co.* v. *City of Chicago*, 228 U.S. 61, 69-70 (1913)), it is only "the wholly arbitrary act" that is unconstitutional (*City of New Orleans* v. *Dukes, supra*, 427 U.S. at 304). The statutory scheme challenged by petitioner cannot be considered wholly arbitrary.[11]

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[11] Petitioner argues (Pet. 9-12, 15) that although it may be rational to expose "top-level management officials" of corporate operators to liability, Section 109(c) is unconstitutional as applied to Richardson. It is clearly rational, however, to treat all decision-making agents of corporations in the same fashion. As a master mechanic, Richardson supervised repair of the mine's equipment (Pet. App. 1a) and thus had important responsibilities for assuring safety conditions in the mine.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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